

Before the
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

In the Matter of)
)
MCI Telecommunications Corporation)
Application for Review of)
)
The Ameritech Operating Companies, Bell)
Atlantic Telephone Companies, BellSouth)
Telecommunications, Inc., Cincinnati Bell)
Telephone Company, GTE Service)
Corporation, The NYNEX Telephone)
Companies, Pacific Bell, Rochester)
Telephone Corp., Southern New England)
Telephone Company, Southwestern Bell)
Telephone Company, The United)
Telephone and Central Telephone)
Companies, and U S West)
Communications)
)
Petitions for Waiver of Sections 69.4(b))
and 69.106 of Part 69 of the Commission's)
Rules)

ORDER

Adopted: September 29, 1997

Released: October 7, 1997

By the Commission:

I. INTRODUCTION

1. MCI Telecommunications Corporation (MCI) filed an Application for Review of the Common Carrier Bureau's Order granting waivers of the Commission's Part 69 Rules to twelve incumbent local exchange carriers (incumbent LECs) pursuant to Section 1.115 of the Commission's Rules.¹ MCI requests review of the Bureau's decision to allow the incumbent

¹ 47 CFR § 1.115.

LECs to establish separate rate elements for the provision of 500 access service.² We conclude that the matter was properly decided by the Common Carrier Bureau, and deny MCI's Application for the reasons described below.

II. BACKGROUND

2. Between July and September 1994, twelve incumbent LECs independently filed petitions for waiver of the Commission's Part 69 Rules in anticipation of providing 500 access service.³ Interexchange carriers (IXCs) that purchase this access service offer to end users a retail 500 service, a relatively new service that provides "follow me" capabilities to a customer.⁴ The record before the Bureau demonstrated that LECs provide 500 access service via one of two methods, and that each method of access causes LECs to incur costs differently. The switch-based method, which employs a translation table contained in the software of each switch, requires a LEC to incur significant non-recurring costs. The Advanced Intelligent Network (AIN) method, which makes a signalling query to a centralized AIN database, causes a LEC to incur costs largely on a per-query basis.⁵ Some LECs proposed to offer 500 access service exclusively through the AIN method. Others proposed to offer 500 access service initially through the switch-based method and then to shift over time to the AIN method. Other LECs proposed to offer 500 access service through the switch-based method in some switches and the AIN method in other switches. In its order, the Bureau rejected arguments that the Commission should impose a uniform rate structure or a particular technological approach to providing 500 access service.⁶ The Bureau approved waivers that allowed rate structures of three general types: One was designed to be suitable for the LECs that use the AIN method to offer 500 access service. A second rate structure was designed to be suitable for LECs that intended to change their 500 access service from a switch-based offering to an AIN-based offering over time. A third rate

² The Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., Cincinnati Bell Telephone Company, GTE Service Corporation, the NYNEX Telephone Companies, Pacific Bell, Rochester Telephone Corp., Southern New England Telephone Company, Southwestern Bell Telephone Company, the United Telephone and Central Telephone Companies, and U S West Communications Petitions for Waiver of Sections 69.4(b) and 69.106 of Part 69 of the Commission's Rules, 9 FCC Rcd 7873 (Com. Car. Bur. 1994) (500 Access Waiver Order). The Commission released a public notice establishing a pleading cycle on January 25, 1995. 10 FCC Rcd 951 (1995).

³ 500 Access Waiver Order, 9 FCC Rcd at 7873, ¶¶ 2-3.

⁴ Id. 500 number service, also known as "follow me" service, allows a customer to instruct his 500 number service provider where to route his calls, whether to a landline telephone, a cellular telephone, a pager, or a voice-message system. This access service also allows the customer to instruct his 500 number service provider to screen calls, allowing only authorized callers to reach the customer via the 500 access number. Id. at 7873, ¶ 2.

⁵ Id. at 7878, ¶¶ 28-30.

⁶ Id. at 7878, ¶ 27.

structure was designed to be suitable for LECs that intend to use both the switch-based and AIN-based methods to provide 500 access service.⁷

III. APPLICATION FOR REVIEW

3. Generally, MCI argues that the Bureau's decision is contrary to the Commission's policies that favor increasing the availability of 500 number service to consumers, promoting technological advances, and implementing 500 number portability.⁸ MCI specifically requests that the Commission set a date certain for LEC implementation of a uniform rate structure and require that the uniform rate structure mirror the 800 database rate structure.⁹ MCI further argues that the Commission should initiate proceedings that would allow the Commission to set a deadline for 500 number portability.¹⁰ Eleven incumbent LECs filed comments or reply comments, one interexchange carrier filed comments in support of MCI, and MCI filed reply comments.¹¹

A. Uniform Rate Structure

1. The Record

4. MCI claims that the Bureau's order unreasonably imposes administrative burdens on MCI and other 500 access service customers and fails to promote technological advances in accordance with Section 7 of the Communications Act of 1934.¹² According to MCI, by allowing LECs to implement both AIN-based and non-AIN-based 500 access service, the order created a conflict between the Commission policy that favors cost-causation and the Commission policy that favors network efficiency. MCI contends that the Bureau did not adequately resolve this

⁷ *Id.* at 7878, ¶¶ 28-30.

⁸ MCI at 1-2.

⁹ MCI at 8.

¹⁰ MCI Reply at 19. Number portability is the statutory requirement that customers be able to take their individual phone numbers with them when they switch to a different telecommunications provider. *See* 47 U.S.C. § 251(b)(2) and (e)(2).

¹¹ The following companies filed comments in opposition: the Ameritech Operating Companies (Ameritech), Bell Atlantic (BA), BellSouth Telecommunications, Inc. (BellSouth), Cincinnati Bell Telephone (CBT), GTE Service Corporation (GTE), the NYNEX Telephone Companies (NYNEX), Rochester Telephone Corporation (Rochester), Southwestern Bell Telephone Company (SWBT), the United Telephone and Central Telephone Companies (Sprint LECs), and U S West. LDDS Communications, Inc. (LDDS) filed in comments in support of MCI. MCI, Pacific Bell (PacBell) and NYNEX filed reply comments.

¹² MCI at 2; MCI Reply at 3, 23.

conflict in its order.¹³ MCI further claims that a uniform rate structure would resolve the conflict between these policies and better serve the public interest.¹⁴

a. Administrative Burden Issues

5. MCI argues that the Bureau's refusal to mandate a uniform rate structure unreasonably places a massive administrative burden on 500 access customers.¹⁵ LDDS states that the cost of the increased burden on IXCs of auditing LEC bills that use a variety of rate structures will increase consumer rates for 500 number service and, therefore, reduce its attractiveness to retail customers.¹⁶ All of the commenting incumbent LECs oppose MCI's assertions on the ground that the Bureau's decision to allow companies to recover costs in accordance with cost-causation principles represented a sound application of Commission policy.¹⁷ A number of incumbent LECs stress that MCI has produced no evidence regarding the administrative burdens imposed on it by varying rate structures.¹⁸ Ameritech and GTE note that attaining uniformity in rate structures will be increasingly impossible because LECs are offering a growing array of access services, with a corresponding variety of rates.¹⁹ SWBT emphasizes that, in the future, local access competition is likely to lead to a greater variety of rate structures.²⁰ Rochester argues that imposing a uniform system would increase its administrative burden, and that the non-recurring charge billed by the non-AIN LECs will be simpler to track than the recurring charge used by AIN LECs and favored by MCI.²¹ MCI counters that LECs do not understand the burdens that interexchange carriers encounter in having to audit a large number of LEC bills.²² MCI explains that it must write software to extract LEC charges and rate elements from each bill, must audit LEC bills and compare them to MCI records, and must

¹³ MCI Reply at 7.

¹⁴ MCI Reply at 7.

¹⁵ MCI at 3-4.

¹⁶ LDDS at 3-4, 5-6.

¹⁷ See, e.g., Ameritech at 2-3; BellSouth at 4; CBT at 1-2; GTE at 3, NYNEX at 3; Rochester at 3; Sprint LECs at 2.

¹⁸ Rochester at 1; SWBT at 2; Sprint LECs at 2.

¹⁹ Ameritech at 1-2; GTE at 3.

²⁰ SWBT at 5.

²¹ Rochester at 2-3.

²² MCI Reply at 14.

accommodate every variation in access rate structures in its billing and auditing software.²³ In addition, MCI contends that non-AIN LEC billing is actually more difficult to audit than AIN billing.²⁴

6. MCI additionally claims that the uniform rate structure for 500 numbers should utilize recurring elements similar to the rate structure for 800 data base access service.²⁵ BellSouth and U S West contend that the 800 access service rate structure is inappropriate because, for some carriers, that rate structure does not reflect the manner in which they incur costs to provide 500 access service.²⁶ In addition, some incumbent LECs argue that the technology used to offer 500 access service is different from 800 number technology.²⁷ MCI disputes incumbent LEC arguments that the technologies underlying 500 number service and 800 service differ materially.²⁸ MCI argues that in the current waiver, the Bureau recognized these similarities when it authorized a 500 access rate structure for some of the incumbent LECs that is similar to the 800 number rate structure.²⁹

7. All LEC commenters oppose MCI's Application because they believe that imposing a specific rate structure or technology will delay the offering of 500 number service.³⁰ Several telephone companies indicated that they would begin offering AIN-based 500 access service when business conditions and consumer demand warranted it.³¹ MCI insists that its proposal would not delay implementation of 500 number service, but instead would allow the current rate structures to be used only as a temporary measure until recurring rate structures could be implemented.³²

²³ MCI Reply at 14. MCI cites the decision to impose a uniform billing structure in the Meet Point Billing proceedings as an example of the Commission's recognition of the need for simplified billing requirements. Id. at n.35 (citing Access Billing Requirements for Joint Service Provision, Order, 65 Rad. Reg. 2d 650 (1988) (Meet Point Billing)).

²⁴ Id.

²⁵ MCI at 8; MCI Reply at 18-19.

²⁶ BellSouth at 4; U S West at 7-8.

²⁷ GTE at 2-3; Sprint LECs at 3-4; U S West at 7-8.

²⁸ MCI Reply at 22-23.

²⁹ MCI Reply at 18.

³⁰ See, e.g., BA at 1-2; BellSouth at 3-4; GTE at 2; Rochester at 2; Sprint LECs at 3; SWBT at 5-6.

³¹ CBT at 2; GTE at 3; Rochester at 2; U S West at 6.

³² MCI Reply at 20.

b. Technological Incentives Issues

8. MCI contends that refusing to mandate a rate structure utilizing recurring charges will discourage LECs from deploying new technology and thus depart from the Commission policy of promoting technological advances.³³ MCI indicates that AIN technology is cheaper and preferable to switch-based technology. In particular, MCI indicates that the cost of opening a 500 access code using non-AIN technology can be almost three times more expensive for a LEC than using AIN technology, and that the time required for a non-AIN LEC to load and test an NXX code can be five times greater than the time required by a LEC using AIN technology.³⁴ LDDS and MCI indicate that, because the older technology will result in higher end-user prices, it is likely to inhibit the development of 500 number service offerings.³⁵ MCI additionally claims that all LECs possess AIN and signalling system 7 (SS7) capabilities, and that because these technologies are necessary for 500 number portability, they should be implemented as quickly as possible.³⁶ MCI claims that the minority of LECs that are not utilizing AIN are depriving the public of many of the benefits of 500 number service.³⁷ MCI further contends that implementing a uniform rate structure would not amount to a mandate that LECs implement a particular technology because LECs would be free to operate under the rate structure with any technology they choose.³⁸

9. In response, SWBT and the Sprint LECs argue that the LEC decisions to provide 500 access before they were able to implement AIN technology reflect their desire to offer this service as quickly as possible, and thus demonstrate that LECs do not need additional incentives to implement AIN.³⁹ Five companies dispute MCI's claim that all telephone companies have the capability to offer AIN and SS7.⁴⁰

10. MCI also argues that failing to encourage efficient technology may enable LECs unlawfully to gain pricing flexibility under price cap regulation.⁴¹ MCI alleges that some LECs

³³ MCI Reply at 11-13.

³⁴ MCI Reply at 16.

³⁵ MCI at 5-7; LDDS at 4-6.

³⁶ MCI at 5.

³⁷ MCI at 7.

³⁸ MCI Reply at 23-24.

³⁹ SWBT at 2; Sprint at 4.

⁴⁰ CBT at 2-3; GTE at 2; Rochester at 2; SWBT at 2-3; Sprint LECs at 3.

⁴¹ MCI Reply at 8-9.

may deploy 500 access service using higher-cost technology first, thus gaining a higher price cap index when the new service is included in the service basket. According to MCI, LECs then will be able to implement the lower-cost technology and reduce 500 access revenues while increasing rates and revenues for other services simply by making a within-band filing.⁴²

2. Decision

11. We conclude that the Common Carrier Bureau's decision regarding the LECs' rate structures for 500 access service is consistent with the Commission's well-established policy of allowing incumbent LECs to charge access rates based on cost-causation principles.⁴³ We find that the Bureau correctly determined that the existing Part 69 rate elements are not adequate for 500 access service and that this service was not anticipated when Part 69 was adopted.⁴⁴ We further find that the Bureau's analysis of the record correctly found that LECs are currently using a variety of technologies to provide 500 number service, and that, as a consequence, LECs do not incur costs to provide this access service in a uniform manner.

12. Commission policy favors economically efficient prices that reflect the manner in which costs are incurred.⁴⁵ A LEC that must make a non-recurring expenditure to provide 500 access service should not generally be forced to recover its costs as if it were using technology that causes a recurring charge. Such a mechanism would distort the prices paid by access customers. Rate structures for 500 access service should reflect the manner in which the costs of providing the service are incurred because this will cause customers of 500 access to make economically rational decisions regarding the use of that service. Providers of 500 service will then offer services that are more efficient in both price and quantity, properly taking into account the cost of the technology used to provide that service to the public. Further, MCI has not shown with any specificity that the three basic rate structures permitted by the Bureau decision cause the "massive" administrative burden it claims. Additionally, we find unpersuasive MCI's request to base a uniform rate structure on the current 800 number rate structure. MCI admits that the 800 number access rate structure would not reflect the way some LECs incur costs.⁴⁶ Consistent with longstanding precedent, we decline to require a LEC to employ a rate structure for 500 access service that does not accurately reflect the manner in which a LEC incurs costs to offer that service.

⁴² Id.

⁴³ See, e.g., Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order, & Order on Further Reconsideration, & Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 4524 at 4533, ¶ 50 (1991) (Part 69 Amendment Order).

⁴⁴ 500 Access Waiver Order, 9 FCC Rcd at 7877, ¶ 25.

⁴⁵ See, e.g., Part 69 Amendment Order, 6 FCC Rcd 4524 at 4533, ¶ 50 (1991).

⁴⁶ MCI Reply at 23.

13. MCI has requested that we set a deadline for implementing a uniform rate structure. Although MCI appears to recognize that the immediate imposition of a uniform rate structure is not appropriate and that, if the LECs are saddled with an unuseable rate structure, it will hamper implementation of 500 number service,⁴⁷ MCI nevertheless contends that it is unreasonable for 500 access customers to bear the administrative burden of multiple rate structures. We decline to adopt MCI's recommendation concerning a deadline for uniform rate structure. Currently, we are considering fundamental issues underlying both AIN and 500 number portability in separate rulemaking proceedings.⁴⁸ It would be premature to set a deadline for the institution of a uniform rate structure as part of this waiver proceeding because either the Commission or the industry may decide that 500 access need not be provided in a uniform manner. In light of these proceedings, establishing a deadline for a uniform rate structure for 500 access service in the context of this waiver would be premature. Furthermore, we note that issues about the relative administrative burdens of various outcomes are, by necessity, incorporated into these various rulemaking proceedings.

14. We reject MCI's request to impose a uniform rate structure as a means to encourage particular technology choices by LECs. In general, Commission policy allows telephone companies to select their technological approaches, and MCI has advanced no persuasive reason that would warrant a departure from this policy in this waiver proceeding. Similarly, we decline to address the price cap issues raised by MCI. As the Bureau indicated below, the tariff review process is the proper forum for reviewing the reasonableness of rate levels.⁴⁹

B. 500 Number Portability Deadline

1. The Record

15. MCI argues that without number portability the 500 number service market will be slow to mature, and some services may never be offered.⁵⁰ LDDS shares MCI's concern that the lack of 500 number portability will diminish competition in the marketplace.⁵¹ The LECs

⁴⁷ Indeed, the LECs have confirmed that the rate structure options available under the waivers are allowing them to offer 500 number service faster than if the Commission had mandated a uniform rate structure. See, e.g., Rochester at 2; U S West at 4-5, 7; BA at 1; SWBT at 2.

⁴⁸ Intelligent Networks, Notice of Proposed Rulemaking, 8 FCC Rcd 6813 (1993) (Intelligent Networks NPRM); Telephone Number Portability, CC Docket 95-116, First Report and Order, 11 FCC Rcd 8352, 8449-8454, ¶¶ 188-98 (1996) (Number Portability Order), petition for recon. filed, Public Notice Rep. No. 2151 (rel. Sept. 6, 1996).

⁴⁹ 500 Access Waiver Order at 7879, ¶ 32.

⁵⁰ MCI at 4.

⁵¹ LDDS at 5.

contend that 500 number portability does not yet exist anywhere in the industry, that it will be more complex than 800 service, that it will raise issues different from the 800 number database, and that it is currently the subject of extensive industry negotiations.⁵² Four parties argue that the issues raised by MCI with regard to number portability and implementation of specific technology and service offerings are outside the scope of this Part 69 waiver proceeding. A majority of the LECs opposing MCI's application urge the Commission to begin a rulemaking on these issues.⁵³ In its reply, MCI concedes that it is not appropriate for the Commission to set a date for number portability in a Part 69 waiver proceeding, but asks that the Commission initiate the appropriate proceedings to do so.⁵⁴

2. Decision

16. This waiver proceeding is not the appropriate forum to create a deadline for 500 number portability. After MCI filed this Application for Review, we released an order in a rulemaking proceeding on telephone number portability, including 500 number portability.⁵⁵ MCI, as well as many of the parties that have commented on MCI's Application, participated in that proceeding. In the Number Portability Order, we concluded that we lacked sufficient information to determine whether it is technically feasible for LECs to provide portability for their own 500 numbers, and directed the Industry Numbering Committee (INC) to examine this issue and file a report within twelve months of the release of that order.⁵⁶ We agree with the Bureau's decision that the issue of whether 500 numbers should be portable is beyond the scope of a Part 69 waiver proceeding, and that a full record should be developed on that matter before we consider issuing a deadline.⁵⁷

⁵² Ameritech at 2; BellSouth at 4, 5; GTE at 2-3; NYNEX at 4; Rochester at 2, n.2; Sprint LECs at 3-4; U S West at 7-9.

⁵³ Ameritech at 2; BellSouth at 5; Rochester at 2, n.2; U S West at 8.

⁵⁴ MCI Reply at 19.

⁵⁵ Number Portability Order at 8454, ¶ 198.

⁵⁶ Number Portability Order at ¶ 198.

⁵⁷ 500 Access Waiver Order, 9 FCC Rcd at 7879, ¶ 32.

IV. ORDERING CLAUSE

17. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and the Commission's Rules, 47 CFR § 1.115(g), that MCI's Application for Review of the Common Carrier Bureau's 500 Access Waiver Order is hereby DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary